IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

WP(C).No. 26345 of 2006(J)

CMP.6592/2005 of J.M.F.C.,PARAVUR

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PETITIONER:

SMT.C.LATHIKA, D/O.JANU,
AGED 42 YEARS, HEADMISTRESS & MANAGER,
GURUJYOTHI MODEL SCHOOL, NEDUNGOLAM P.O.,
NOW RESIDING AT `SAROJ GANGA', NEDUNGOLAM P.O.,
KOLLAM.

BY ADV. SRI.G.BHAGAVAT SINGH

RESPONDENTS:

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1. THE SUB INSPECTOR OF POLICE,
CENTRAL POLICE STATION, ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
CHATHANNOOR POLICE STATION,
CHATHANNOOR P.O.

3. SMT.R.BRIHANDALA,
W/O.P.SUDESAN, AGED 50 YEARS,
SECRETARY, CHATHANNOOR GRAMA PANCHAYAT,
RESIDING AT `PREM JYOTHI', MUDIYAKODE,
CHERUNNIYOOR P.O., VARKALA, THIRUVANANTHAPURAM.

*R3 IS DELETED FROM THE ARRAY OF PARTY AS PER THE JUDGMENT.

R3 BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.PIRAPPANCODE V.S.SUDHIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 PHOTOCOPY OF COMPLAINT DT. 20.12.02 FILED BY THE PETITIONER BEFORE THE CJM, ERNAKULAM.

EXT.P2 PHOTOCOPY OF REFER CHARGE DT. 21.8.04 FILED ON 7.10.04 BY R2 BEFORE JFMC, PARAVUR.

EXT.P3 PHOTOCOPY OF NOTICE DT.21.8.04 FILED BY THE POLICE BEFORE JFMC, PARAVUR.

EXT.P4 PHOTOCOPY OF PETITION DT.28.9.05 FILED UNDER SEC.173(8) CR.P.C. BY THE PETITIONER BEFORE JFMC, PARAV.

EXT.P5 PHOTOCOPY OF APPLICATION FOR ADMISSION FILED BY A.BABU BEFORE THE PETITIONER.

EXT.P6 TPHOTOCOPY OF STATEMENT DT. 11.8.01 GIVEN BY SHRI.BABU BEFORE R2 IN EXT.P1 COMPLAINT.

EXT.P7 PHOTOCOPY OF STATEMENT OF EXPENDITURE DT.11.10.2000 BEFORE THE SECRETARY TO THE CHATHANNOOR GRAMA PANCHAYAT.

EXT.P8 PHOTOCOPY OF THE ORDER DT.31.12.05 IN CMP 6592/05 OF JFMC, PARAVUR.

/TRUE COPY/

R. BASANT, J.

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W.P.C.No. 26345 of 2006 J

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Dated this the 25th day of January, 2007

JUDGMENT

The petitioner is the defacto complainant in a crime registered alleging offences punishable, inter alia, under Sections 120B and 465 r/w. 34 I.P.C.

2. The crux of the allegations raised by the petitioner in the complaint filed before the learned Chief Judicial Magistrate, Ernakulam, is that the accused persons had conspired to forge Ext.P6 statement of one Babu for production before the High Court of Kerala in O.P.No. 1468 of 2001. That Original Petition was dismissed by the High Court as per judgment dt. 19.10.2001.

3. The petitioner's grievance was that Ext.P6 statement produced by the accused persons before the High Court was a forged document, which they had forged earlier and produced before the High Court. The learned Chief Judicial Magistrate referred the matter to the police under Section 156(3) Cr.P.C. Investigation commenced. The Investigating Officer, in the course of investigation, felt that the alleged offence of forging Ext.P6 was

committed within the jurisdiction of Chathannur police station. Accordingly, the crime was transferred to the Chathannur police station for investigation. After completing the investigation, the Investigating Officer filed a refer report before the learned Magistrate having jurisdiction, i.e., J.F.C.M., Paravur. On receipt of notice from the court about that refer report, the petitioner entered appearance before the learned Magistrate and raised objections against the refer report. She also prayed that further investigation may be directed under Section 173(8) Cr.P.C. The learned Magistrate, by the impugned order, copy of which is produced as Ext.P8, rejected the said prayer and dismissed the application.

4. The petitioner has come to this Court aggrieved by Ext.P8. The learned counsel for the petitioner raises various contentions in his attempt to challenge Ext.P8 order. First of all the counsel assails the conclusion of the learned Magistrate that in the absence of relevant findings and a complaint by the High Court, which disposed of O.P. 18468 of 2001, no prosecution in respect of Ext.P6 produced before the High Court can be initiated. There is no serious dispute on this contention. The decision in **Iqbal Singh Marwah** v. **Meenakshi Marwah** (AIR 2005 SC 2119) finally settles the controversy on that aspect. The five Judge Bench has

confirmed the earlier decision that sanction of the Court is necessary only when forgery is committed after the production of the document in Court. In this case, the very specific allegation is not that the forgery was committed after the document was produced in court, but only before it was produced before the Court. In these circumstances that reason shown in the impugned order cannot be accepted.

5. The learned counsel for the petitioner then contends that the case was wrongly transferred by the investigating Officer from the Central Police Station, Ernakulam, to which the learned Chief Judicial Magistrate had referred the case under Section 156(3) Cr.P.C. The document was produced before the High Court and therefore jurisdiction was for the police here to conduct the investigation, it is urged. I do not find much merit in this contention. The document, which is allegedly forged, is a statement allegedly given before the President of the Panchayat at Nedungola. Therefore, at any rate, the insistence that the Central Police, Ernakulam must conduct the investigation does not appear to be justified. At any rate, the offence, if true, must be held to be committed at the place where the alleged forgery did take place as also at the place where it was used or germane. Allegedly, the forged document was produced before the

High Court and therefore it cannot be held that the transfer of the crime to the police station within the jurisdiction of which the forgery proper was allegedly committed is not sustainable.

6. We now come to the last and the important contention raised by the learned counsel for the petitioner that a proper investigation has not been conducted. Ext.P6 is alleged to be a statement given by one Babu recorded by the 2nd respondent. The very contention of the petitioner now is that Babu must also have been a party to such forgery to justify the defence set up by the accused persons in the Original Petition disposed of by the High Court. In support of this contention, he relies on the various signatures of the said Babu at different times, which are not congruent and which do not tally. It is in these circumstances that the stand taken by the learned Govt. Pleader, according to me, becomes relevant. The learned Govt. Pleader submits that the State is not satisfied with the investigation conducted. She submits that the interests of justice would certainly demand a further investigation to be conducted in the matter. The learned Govt. Pleader pointed out several circumstances in support of this contention. She submits that the signature of Babu in the disputed document does not at all tally with other signatures of his or the specimen signature given by him

before the police. In these circumstances the learned Govt. Pleader also submits that further investigation can and ought to be directed in the facts and circumstances of the case.

7. The third respondent has been given notice. The third respondent is the first accused in the crime. At this stage really the accused has no right to be heard. The third respondent, who has entered appearance through counsel, submits that the notice has unnecessarily been issued to her and that she may not be held to be bound by any finding which is rendered in this case. I accept the said submission. The third respondent is, at her request, deleted from the array of parties. Registry shall carry out the directions. In the light of the submissions of the learned Govt. Pleader, I am satisfied that the police can be permitted to conduct further investigation under Section 173(8) Cr.P.C.

8. This Writ Petition is accordingly allowed. The impugned order is set aside. The police is directed to conduct a further investigation under Section 173(8) Cr.P.C. and submit a further report to the learned Magistrate. The learned Magistrate shall consider such report and pass appropriate orders. I may hasten to observe that I have not intended to make any expression of opinion on merits of the dispute between the

parties. I must be reckoned as having stated only that a further investigation is necessary as requested by the petitioner, which request was endorsed by the learned Prosecutor.

(R. BASANT)
Judge

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